of this court will have the unquestioned merit of harmony of principle, and equity and consistency of application. The value of such uniform application of the rule is seen to be inestimable when it is observed that there is an apparently hopeless discord existing in several instances in the rulings of the same jurisdiction,[10] as well as in those of different jurisdictions in declaring whether the breach constituted an absolute forfeiture or a suspension, often stating the rule arbitrarily or basing it upon *dicta* of earlier cases. The most frequent instances in which the question is presented are under prohibitive warranties against increase of risk,[11] transfer of title,[12] vacancy,[13] hazardous articles,[14] and other insurance.[15] The decision in *McClure* v. *Mutual Fire Insurance Company*,[16] seems to have unified the rulings.

J. C. A.

MINES—NATURAL USE—LIMITATION OF THE SANDERSON CASE —The Supreme Court of Pennsylvania has once more considered, distinguished and limited the authority of *Pennsylvania Coal Co.* v. *Sanderson*.[1] In this recent[2] case the plaintiff and the defendant owned adjoining properties; the latter a large tract of coal land, the former a farm. For many years the defendant had been mining and removing coal on its land; and prior to 1908 the mine water collected and pumped to the surface, was discharged into a different water shed than that in which the plaintiff's farm was situated.

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[10] For instance, two Ohio decisions handed down the same day, Ohio Far. Ins. Co. v. Burget, 65 Ohio St. 119 (1901) declaring a suspension in case of a temporary transfer of goods; and Ohio F. I. Co. v. Waters, 65 Ohio St. 157 (1901) declaring a transfer of title worked a forfeiture, even though at the time of the loss the insured was again owner.

[11] Forfeiture declared in Kyte v. Ins. Co., 149 Mass. 116 (1889); Suspension merely, Trad. Ins. Co. v. Catlin, 163 Ill. 256 (1896); N. B. M. I. Co. v. Union S. Y. Co., *supra*, n. 9.

[12] Suspension: Schloss v. Ins. Co., 141 Ala. 566 (1904); Worthington v. Bearse, 94 Mass. 3829 (1866). Forfeiture: Bemis v. Ins. Co., 200 Pa. 340 (1901); Ins. Co. v. Waters, *supra*, n. 10.

[13] Suspension: Ins. Co. v. Garland, 108 Ill. 220 (1884); Ring v. Ins. Co., 145 Mass. 426 (1888). Forfeiture: Moore v. Ins. Co., 62 N. H. 240 (1882); Wainer v. Ins. Co., *supra*, n. 5; Kentucky, *etc.*, Co. v. Ins. Co., 146 Fed. Rep. 695 (C. C. 1906).

[14] Suspension: Phoenix Ins. Co. v. Lawrence, 4 Met. 9 (Ky. 1862); Williams v. Ins. Co., *supra*, n. 9. Forfeiture: Mead v. Ins. Co.; Turnbull v. Ins. Co., *supra*, n. 4.

[15] Suspension: Ins. Co. v. Klewer, 129 Ill. 509 (1889); Obermeyer v. Ins. Co., 43 Mo. 573 (1869). Forfeiture: Replogle v. Ins. Co., 132 Ind. 360 (1892); Ins. Co. v. Rosenfeld, 37 C. C. A. 96 (1899).

[16] N. 7, *supra*.

[1] 113 Pa. 126 (1886).

[2] McCune v. Pittsburg & B. C. Co., 238 Pa. 83 (1913).

After 1908, however, the water thus discharged to the surface flowed naturally into a tributary of the stream which ran through farm; and, as a consequence, the stream was rendered useless for domestic or farm purposes. A bill for an injunction was granted against the defendant, who was allowed six months to enable it to arrange for some other disposition of the water. The opinion of the lower court was affirmed in a *per curiam* decision of the Supreme Court.

In granting the bill, Doty, P. J., said:[3] "Unless this case be clearly an exception, the maxim *sic utere tuo ut alienum non laedam* . . . must apply and control. And this principle, as all the authorities declare, always applies whenever in the use of one's own property any substantial and avoidable injury is done to the property of another." He then proceeds to distinguish Sanderson's case which, he states, holds that[4] "an owner of coal lands can mine his coal in the usual and ordinary way; and in such operation allow the water as it comes from the mine to flow naturally into a stream of pure water without liability to a lower riparian owner for the pollution of the stream; and such operator can in a shaft operation pump mine water to the surface and allow it to seek its natural outlet, without liability for damage if the water of the stream be already polluted." He further states that Sanderson's case, as a result of the modifications and qualifications of it by later cases, is, at most, an authority only on its exact facts.

The rule of Sanderson's case was decided by the Pennsylvania Supreme Court after the case had been before the court for the fourth time; and on that occasion, all the previous decisions concerning the case were overruled. In that case the plaintiff in the coal lands, on which he erected a handsome residence and made valuable improvements in order that he might be supplied with water for culinary, bathing and other purposes from a stream of pure water which flowed through his land. Shortly afterwards the defendant opened a mine on the stream about two miles above the plaintiff's land. The water, pumped therefrom in the operation of the mine, flowed naturally into the stream, and so polluted it as to render the water unfit for the uses to which it had been adapted. In a suit for damages the plaintiff was nonsuited at the first trial. On appeal,[5] the Supreme Court held that the case should have been submitted to the jury; and Woodward, J., in delivering the opinion of the court said,[6] "Undoubtedly the defendants were engaged in a perfectly lawful business, in which large expenditures had been made, and with which widespread interests were connected. But,

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[3] At p. 90.
[4] At p. 91.
[5] 86 Pa. 401 (1878).
[6] At p. 405.

however laudable an industry may be, its managers are still subject to the rule that their property cannot be so used as to inflict injury on the property of their neighbors."

At the second trial there was a verdict for the plaintiff. But both litigants took writs of error from the rulings of the trial judge. In the two arguments thereon before the court,[7] it affirmed its previous decision and ruled in favor of the plaintiff in his appeal, ordering a new trial. At the third trial, a larger verdict for the plaintiff was returned, and defendant appealed. On this fourth appeal,[8] the Supreme Court overruled its three previous decisions as to the plaintiff's cause of action and laid down the rule which has been so much criticized. In this decision, Clark, J., delivered the opinion of the court, from which three of the seven judges dissented. He said, *inter alia*,[9] "It may be stated as a general proposition that every man has the right to the natural use and enjoyment of his own property; and if, while lawfully in such use and enjoyment, without negligence or malice on his part, an unavoidable loss occurs to his neighbor, it is *damnum absque injuria;* for the rightful use of one's own land may cause damage to another, without any legal wrong. . . . It will be observed that the defendants have done nothing to change the character of the water, or to diminish its purity, save what results from the natural use and enjoyment of their own property. They have brought nothing upon the land artificially.[10] . . . In the first place, then, we do not regard the rule in *Rylands* v. *Fletcher* as having any application to a case of this kind; and if it had, we are unwilling to recognize the arbitrary and absolute rule of responsibility it declares, to the full extent, at least, to which its general statement would necessarily lead."[11] The opinion also laid great stress on the fact that great industrial interests would be affected by any other decision than that given; and also noted that there was evidence that the stream might have been polluted from other causes, and, accordingly, there should be no liability.

This final judgment, decided by a divided court, must be taken to have gone to the extreme of considering the term "natural use" to mean "any act tending to the most profitable use of the land."[12] It was not very long, therefore, before the case began to be discussed, distinguished and modified in later cases, until its authority was finally limited to the exact facts involved.

Three years after its decision, the Supreme Court, in discussing it, stated [13] that "the use which inflicts the damage must be natural,

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[7] 94 Pa. 302 (1880); 102 Pa. 370 (1883).

[8] 113 Pa. 126 (1886).

[9] At p. 146.

[10] At p. 145.

[11] At p. 154.

[12] *Vide* Prof. Bohlen's article "The Rule in Rylands v. Fletcher," 59

proper and free from negligence, and the damage unavoidable." *Robb* v. *Carnegie*,[14] was distinguished from it on the ground that in the Sanderson case the use of the land by the Coal Company was the only practical one; and if it had been denied this use because of some unavoidable injury to others "the result would be practical confiscation of the coal lands for the benefit of householders, living in lower lands"; whereas in *Robb* v. *Carnegie*,[15] the defendants were not developing the minerals of their own land, but were using it in manufacturing coal mined from other land.

The tendency to limit the case to its own facts continued through all subsequent cases. In *Hindson* v. *Markle*,[16] Sanderson's case was distinguished as being a case in which "the mere flowage of natural water which was discharged by natural and irresistible forces, necessarily developed in the act of mining prosecuted in a perfectly lawful manner. While the mine water thus discharged polluted the water of the stream in which it necessarily flowed it caused no deposit of any foreign substance on the land of the plaintiff and did not deprive her of its use"[17] as was the case in *Hindson* v. *Markle*. The court in this way found the distinction which it sought and was thus able to decide the case without overruling the Sanderson case. That the celebrated case does not control when public rights are involved is intimated in some decisions: "Does a great municipality stand on the same ground, when the water supply for its multitude of people is under consideration, as a single property owner must stand under Sanderson's case?"[18]

UNIVERSITY OF PENNSYLVANIA LAW REVIEW, 298, 373, 423; note 71 at p. 380.

[13] Collins v. Charters Co., 131 Pa. 143 (1889), at p. 157; B bored for gas and an injury resulted to A's neighboring water-well, arising from the commingling by B's well, of the salt and fresh waters percolating under ground. *Held:* B liable; the injury could be anticipated and was preventable by the exercise of reasonable care at a reasonable cost. Followed in Pfeiffer v. Brown, 165 Pa. 267 (1895).

[14] 145 Pa. 338 (1891), B was engaged in manufacturing coke from coal not mined by himself but purchased at the mines of others, remote from his land. *Held:* B liable for substantial injuries to the crops and soil of A's adjoining farm, caused by the smoke and vapors emitted from B's ovens as necessary incident thereto. *Accord:* Hauck v. Line Co., 153 Pa. 366 (1893); Welliver v. Irondale Co., 38 Super. Ct. 26 (1909).

[15] *Supra*, n. 14.

[16] 171 Pa. 138 (1895), B, the owner of coal mines, deposited the refuse and culm on his own land but in a position where ordinary storms could wash it into the stream; damage resulted to A, a lower owner. *Held:* B liable. *Accord:* Elder v. Coal Co., 157 Pa. 490 (1893) *semble*.

[17] At pp. 144, 145.

[18] Com. v. Russel, 172 Pa. 506 (1896); Com. v. Emmers, 221 Pa. 298 (1908); 33 Super. Ct. 151 (1909). The A. Co., a private corporation supply a city with water, brought bill for an injunction against B for polluting its supply of water resulting from B's pumping salt water therein from his wells. Lower court held that Sanderson's case ruled, this was reversed and the case sent back for trial. *Vide* 172 Pa. 519, 520, 521.

The court in one case[19] suggested that the decision of the Sanderson case should be modified, as to apply it under all circumstances would result in a practical confiscation of the lower proprietor for the benefit of the upper; but it refuses to do so on the ground that the case which it is deciding does not necessitate any consideration of that case. In another case,[20] it is said, "The changed conditions brought about by the appellee have not resulted from the development and natural use and enjoyment of its own property, as was the case in *Pa. Coal Co.* v. *Sanderson,*[21] the doctrine of which case has never been and never ought to be extended beyond the limitations put upon it by its own facts." Somewhat to the same effect is the Superior Court [22] in its statement, "This case (Sanderson's case) is exceptional and rests entirely upon its own facts, and has been distinguished by the court which rendered it, from cases such as this in *Hindson* v. *Markle.*"[23]

Not only have the later Pennsylvania cases thus taken away all authority from the Sanderson case beyond its own facts, but the courts of other States have criticized it and considered it to be weak as an authority even on its exact facts.[24] It can, therefore, be said with this most recent expression of our Supreme Court, that the decision no longer states any peculiar Pennsylvania rule as was intimated in an English case.[25]

N. I. S. G.

NEGLIGENCE—UNREGISTERED AUTOMOBILE ON A HIGHWAY—In a recent Massachusetts case [1] the plaintiff, whose automobile was damaged by collision with defendant's on a public highway, was not permitted to recover, since he was operating his automobile in violation of a statute prohibiting the operation of unregistered automobiles.

This decision simply follows the rule already established in that State, the courts of which have uniformly assumed that the plaintiff's unlawful act contributed to his injury; while on the other hand, the courts of New York and some other States have just as consistently held that the plaintiff in such cases may recover, always

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[19] Robertson v. Coal Co., 172 Pa. 566 (1896).

[20] Sullivan v. Steel Co., 208 Pa. 540 (1904), at p. 549.

[21] *Supra,* n. 1.

[22] Bricker v. Stone Co., 32 Super. Ct. 283 (1906). Residuum of B's quarrying and stone-crushing operations, cast into a stream on which B's works were situated, caused sediment to settle on A's lower mill dam and damaged A's mill. *Held:* B liable.

[23] *Supra,* n. 16.

[24] Straight v. Hover, 79 Ohio 263 (1909); Parker v. Woolen Co., 195 Mass. 591 (1907).

[25] Young v. Distilling Co. (Eng. 1893), A. C. 691.

[1] Holden v. McGillicuddy, 102 N. E. Rep. 923 (Mass. 1913).